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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

HOOTAN FARAHMAND et al.,

Plaintiffs and Appellants,

v.

JENNIFER AMELI-BAKHTIAR,

Defendant and Respondent.

B230279

(Los Angeles County  
Super. Ct. No. BC410933)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Joanne O'Donnell, Judge. Affirmed.

Law Offices of Gennady L. Lebedev, Gennady L. Lebedev and Sam Helmi for  
Plaintiffs and Appellants Hootan Farahmand and Sheri Kashani.

Law, Brandmeyer + Packer, Kent Brandmeyer, Jennifer K. Villebro; and David J.  
Ozeran for Defendant and Respondent.

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A fiancé and fiancée went to premarital counseling, some sessions jointly and other sessions individually. The counselor allegedly promised the fiancé to keep his individual session comments secret from his fiancée, and vice-versa, and promised to keep all of their counseling session comments secret from outside third-parties. In the current action, fiancé and fiancée (now married) have sued the counselor for allegedly disclosing the then-fiancé's individual session comments to the then-fiancée, and vice-versa, and that the counselor also disclosed counseling session comments to members of their families. The trial court granted the counselor's motion for summary judgment (MSJ) based on the statute of limitations. We affirm.

### **FACTS**

In January 2006, Hootan Farahmand and Sheri Kashani attended five sessions with Jennifer Ameli-Bakhtiar, M.F.T., Ph.D., for premarital counseling. Some of the sessions were joint and some were individual. There were no sessions after January 2006.

At the start of the sessions, both Farahmand and Kashani told Ameli-Bakhtiar that they wanted her to keep everything they said in any individual session confidential from each other, and from any outside person. During a joint session, Ameli-Bakhtiar shared that Farahmand had commented in an individual session that he thought Kashani was "lazy;" during a joint session, Ameli-Bakhtiar shared that Kashani had commented in an individual session that she "wasn't comfortable" with her personality getting along with Farahmand's personality. Farahmand and Kashani fought more often during the time they were seeing Ameli-Bakhtiar, which they attributed to her. Despite the increased tension, Farahmand and Kashani married in July 2006 as planned. They remain married today.

Farahmand's brother, Homan, and his wife also attended sessions with Ameli-Bakhtiar. Sometime around the end of January 2006, Ameli-Bakhtiar several times made disclosures to Homan in their sessions that relayed information regarding Ameli-Bakhtiar's sessions with Farahmand and Kashani. Further, Ameli-Bakhtiar told Homan that she had concerns about Kashani's family and about Kashani "in general," and that Homan should do whatever he could to stop Farahmand from marrying Kashani.

In December 2006, Homan and his wife, along with Homan's and Farahmand's mother, Guity, attended a joint counseling session with Ameli-Bakhtiar. At that session, Ameli-Bakhtiar made comments that Farahmand and Kashani were patients and that they still owed her money for her counseling services. In February 2007, Homan told Guity that Ameli-Bakhtiar had told him "a lot of private information" about Ameli-Bakhtiar's sessions with Farahmand and Kashani. Homan told their mother that he thought Kashani had married Farahmand for money. At that time, Guity did not say anything about Homan's comments to Kashani or Farahmand because they were already married. Farahmand and Kashani have "no knowledge" of any person receiving information about their counseling sessions with Ameli-Bakhtiar, other than Homan and Guity.

In April 2009, Farahmand and Kashani filed a complaint for damages against Ameli-Bakhtiar. Farahmand and Kashani's operative first amended complaint, filed in January 2010, alleged the following causes of action, all based on allegations that Ameli-Bakhtiar wrongly disclosed confidential communications as between Farahmand and Kashani, and to third-parties: (1st) professional negligence; (4th) breach of oral contract to keep communications confidential communications; and (5th) fraud based on a promise of confidentiality without intent to perform.<sup>1</sup>

In August 2010, Ameli-Bakhtiar filed an MSJ or in the alternative, a motion for summary adjudication of issues. The motion argued that Farahmand's and Kashani's cause of action for professional negligence was barred by the one-year statute of limitations pursuant to section 340.5 of the Code of Civil Procedure,<sup>2</sup> that their cause of action for breach of oral contract was barred by the two-year statute of limitations pursuant to section 339, and that their cause of action for fraud was barred by the three-year statute of limitations pursuant to section 338.

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<sup>1</sup> It is undisputed that Farahmand and Kashani abandoned a second cause of action alleging intentional infliction of emotional distress, and a third cause of action for negligent infliction of emotional distress.

<sup>2</sup> All further section references are to the Code of Civil Procedure

At a hearing in November 2010, the trial court granted Ameli-Bakhtiar's MSJ. On November 19, 2010, the court signed a formal order granting the MSJ, and judgment in favor of Ameli-Bakhtiar.

Farahmand and Kashani filed a timely notice of appeal.

### **DISCUSSION**

Farahmand and Kashani raise one claim on appeal — the trial court erred in ruling that the “continuing accrual rule” did not apply in their case. According to Farahmand and Kashani, the accrual date of their causes of action should have been “evaluated with regard to each separate ‘wrong’ committed by [Ameli-Bakhtiar].” We are not persuaded to reverse the trial court's summary judgment ruling.

In an action alleging professional negligence against a health care provider, the time for the commencement of the action “shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.” (§ 340.5.) Here, the alleged wrongful conduct by Ameli-Bakhtiar is her disclosures of confidential communications, and the injury allegedly suffered by Farahmand and Kashani is the emotional distress that was caused upon their learning that Ameli-Bakhtiar had violated their confidences.

The continuing accrual rule provides that, when an obligation to perform or other liability arises on a recurring basis, a cause of action accrues each time a failure to act or a wrongful act occurs, triggering the start of a new limitations period. (See, e.g., *State of California ex rel. Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 418.) Historically, application of the continuing accrual rule has been limited to cases involving obligations “to make periodic payments under . . . statutes or regulations” (*Hogar Dulce Hogar v. Community Development Commission* (2003) 110 Cal.App.4th 1288, 1295-1296), or involving ongoing nuisances (see, e.g., *Baker v. Burbank-Glendale-Pasadena Airport Authority* (1985) 39 Cal.3d 862, 869). Under the continuing accrual rule, time-barred claims remain time-barred, but a plaintiff is not precluded from bringing an action based on a continuing wrong that causes a continuing injury. In other words, a plaintiff is not charged with sitting on his or her rights, and does not forfeit his or her

right to sue for an injury that is shown to have been suffered within the limitations period, even though it is of a similar nature as a time-barred claim.

As we understand it, Farahmand and Kashani argue that Ameli-Bakhtiar had an ongoing duty not to disclose confidential communications, that each time she disclosed confidential communications she committed an independent wrong. Further, that each time Farahmand and Kashani thereafter learned of a new disclosure, causing a new wave of emotional distress, there was a new injury, thus resulting in the accrual of a new cause of action. In response, Ameli-Bakhtiar relies on the rule, long applied in the context of latent medical malpractice or products liability cases, that the cause of action may not be “split,” and thus accrues upon the manifestation of injury, and the fact that the injury may grow worse or linger over time does not mean that the accrual of the cause of action is delayed. (See, e.g., *Bennett v. Shahhal* (1999) 75 Cal.App.4th 384, 391-392.) Under the “no splitting” rule, argues Ameli-Bakhtiar, all claims alleged by Farahmand and Kashani accrued in January 2006 because, by that time, they knew Ameli-Bakhtiar had disclosed information about their sessions, and they suffered emotional distress from learning about the disclosures.

In our view, the cases cited by Ameli-Bakhtiar do not fit squarely into the fact-pattern and plaintiffs’ theory involved in the current case. Under the theory of liability advanced by Farahmand and Kashani, this is not a manifestation-of-injury case because they allege recurring, new injuries upon each alleged new disclosure by Ameli-Bakhtiar. This case does not involve a wrongful act in 2006, with a growing injury thereafter.

We assume without deciding that Farahmand and Kashani are correct that the continuing accrual rule applies in their case, and that they may pursue an action based on a newer disclosure by Ameli-Bakhtiar, and the newer resulting emotion distress caused to Farahmand and Kashani upon their learning of the newer disclosure. In other words, we accept that Farahmand and Kashani may pursue a claim for a new injury based on a new wrong by Ameli-Bakhtiar, even though they may have sat on their rights with regard to older disclosures and older injuries of the same nature.

The problem for Farahmand and Kashani is that application of the continuing accrual rule does not save their case because they have expressly conceded in their opposition to Ameli-Bakhtiar's MSJ that *they have no knowledge of any disclosures* other than those that Ameli-Bakhtiar allegedly made to Farahmand's brother and mother in late 2006 and early 2007. In short, Kashani and Farahmand implicitly, but necessarily, concede they have not suffered any new wave of emotional distress based on disclosures after late 2006 and early 2007. For this reason, their cause of action for professional negligence, filed in April 2009, is time-barred by the statute of limitations as to disclosures and injuries in late 2006 and early 2007, and does not support a cause of action for professional negligence based on newer disclosures and newer injuries because they concede they have no knowledge of new disclosures and, thus, have suffered no new injuries. The same analysis applies to Farahmand's and Kashani's cause of action for breach of oral contract; in the absence of a newer injury caused by a newer breach, there is no accrual of a new cause of action.

Farahmand's and Kashani's cause of action for fraud stands in a slightly different light, but the result is the same. Indeed, the statute of limitations analysis is even more solidly in favor of Ameli-Bakhtiar on this claim. As we understand their operative first amended complaint, Farahmand and Kashani allege a fraud based on a promise to keep confidences without an intent to perform. During the joint sessions in January 2006, Farahmand and Kashani knew that Ameli-Bakhtiar broke her promise when she shared their private counseling session comments in a joint session. A fraud claim, if any, based on a promise without intent to perform, became apparent immediately upon the patent broken promise. A new fraud did not ensue with each further failure to perform because Ameli-Bakhtiar's fraud had already been discovered.

**DISPOSITION**

The judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.